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IN THE

Supreme Court of the United States

October Term, 1969

No. 79

SANDRA ADICKES,

Petitioner,

against

S. H. KRESS AND COMPANY,

Respondent.

**RESPONDENT'S STATEMENT TO PETITIONER'S
REPLY BRIEF**

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REPLY BRIEF**

Petitioner's reply brief raises, for the first time and at the eleventh hour, a point concerning the alleged conspiracy which is simply untrue. Respondent submits this brief statement to correct that error. This statement does not consider the other portions of the reply brief, as they contain no new material.

Petitioner, in a last frantic effort to create a factual issue concerning the alleged conspiracy, attempts to tie Kress to the police by weaving some theory that

"A reasonable inference, among others, that could be drawn from the statement, affidavit and deposition evidence, is that, a 'sign' was given by Miss Baggett to Patrolman Hillman directing him to make the arrest of petitioner" (Reply Br. p. 6).

Petitioner then goes on to boldly state to this Court:

"There is no denial or testimony by affidavit or otherwise, from Miss Baggett on this subject and petitioner sought in vain to take her deposition." *
(Ibid.)

* While petitioner states that Kress "refused" to produce Miss Baggett for deposition (Reply brief, pp. 3, 9), the fact is that the District Court held that Miss Baggett was not a managing agent and therefore Kress could not compel her to come to New York (R. 385-86). Miss Baggett was still available and accessible to petitioner as a witness through other normal discovery procedures, which petitioner never bothered to pursue.

This statement is ~~totally~~ erroneous. In response to her request petitioner received, in addition to the statements of Irene Sullivan and Dolores Freeman, upon which she relied so heavily, a statement from Miss Baggett herself. This statement was marked by petitioner as Exhibit 4 to Mr. Powell's deposition (A. 146).

Miss Baggett's statement, printed as an Addendum to the Joint Appendix and annexed hereto, belies petitioner's latest claim, declaring:

"I made no contact with the local police which resulted in this woman's arrest, or had any contact with a policeman at all for that matter, on this date, August 14, 1964, or any other day. As far as I know no Kress employee was related in any way whatsoever to the subsequent arrest of this woman."

The courts below were unanimous with respect to the propriety of summary judgment. Petitioner's unfortunate misstatement at this late date should not serve to detract from those rulings. The judgments below should be affirmed.

November 7, 1969

Respectfully submitted,

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ADDENDUM TO JOINT APPENDIX**Statement of Jo Ann Baggett**

My name is Jo Ann Baggett. I am employed by S. H. Kress and Co. as Manager of the Food Department in their Hattiesburg, Mississippi store.

On August 14, 1964 I was working at the sandwich board during the noon rush period. Seven Negroes accompanied by a white woman entered the store and seated themselves in two of our booths at the lunch counter.

Dolores Freeman, a waitress asked me what to do. I directed her to take the Negroes' orders and looked over to the store manager, Mr. Powell, who was standing nearby, for instructions on taking the white woman's order. He shook his head indicating that he did not feel that we could serve her at that time. Miss Freeman did take the Negroes' orders, however, when service was refused the white woman the entire group got up and left without waiting for their food.

After the group left the store, I had an opportunity to talk with Mr. Powell. He explained that his decision on the fact that the store was filled with customers and that he felt that personal harm to the white woman, other customers, and store personnel might result if the girl had been served.

At the time they were here, the store was in fact filled with customers and there were quite a few militantly milling about the area. Also there were more people outside the store looking in through the front window. It seemed to be a real explosive situation.

It is our policy to serve anyone regardless of race, creed, color, or national origin. We held a meeting with

all of our Food Department employees after the passage of the Civil Rights Bill to advise them of our policy.

We served on the afternoon of August 14, 1964, a white man and a Negro who entered together and sat at our lunch counter. . However when they came in there were fewer people in the store and the danger of an incident was greatly reduced. As a matter of fact we had served the white woman, who has made the complaint, on occasions prior to August 14, 1964, and would have been more than willing to serve her then had it not been for the consideration for her safety as well as the safety of the other people in the store.

I made no contact with the local police which resulted in this woman's arrest, or had any contact with a policeman at all for that matter, on this date, August 14, 1964, or any other day. As far as I know no Kress employee was related in any way whatsoever to the subsequent arrest of this woman.

The above statement is correct to the best of my knowledge.

JO ANN BAGGETT

11/18/64

